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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff

16 v.

17 ALLEN CALLOWAY,

18 Defendant.
19

No. CR. 05-00167 WHA (EMC)

DETENTION ORDER

20 On November 30, 2005, the Court held a detention hearing and received evidence in the
21 form of the United States's proffer, the Defendant's proffer, and a report by United States Pretrial
22 Services.

23 Having considered the parties' proffers, the Pretrial Services Report, and the files and
24 records in this matter, the Court finds by a preponderance of the evidence that Defendant is a risk
25 of flight and by clear and convincing evidence that Defendant presents a danger to the community
26 that cannot be mitigated by available conditions and the Court hereby **ORDERS** him detained. In
27 so holding, the Court has considered the following factors:
28

1 1. On October 27, 2005, a federal grand jury returned a multiple count indictment charging
2 Defendant Allen Calloway with, *inter alia*, a violation of 21 U.S.C. § 846 (Conspiracy to
3 Distribute and to Possess With Intent To Distribute Cocaine Base, Marijuana, and Ecstasy)
4 (Count One). Because the maximum penalty for this violation is a term of ten years or more
5 under the Controlled Substances Act, there is a rebuttable presumption that “no conditions or
6 combination of conditions will reasonably assure the appearance of the person and safety of the
7 community.” 18 U.S.C. § 3142(e).

8 2. The Defendant is subject to a mandatory minimum of ten years imprisonment for Count
9 One of the indictment. Because he faces a potential life sentence and a mandatory prison term of
10 at least ten years, he has an incentive to flee.

11 3. The government also proffered that Defendant is an admitted member of a violent criminal
12 street gang known as “Down Below Gangsters” (DBG). The indictment charges other members
13 of DBG with a conspiracy to kill witnesses. Although there is no evidence of direct involvement
14 in any such violent activity by Defendant, the admitted association with DBG raises a significant
15 risk to community safety, particularly when coupled with Defendant’s criminal history
16 establishing continued involvement with guns.

17 4. The government also proffered evidence that on a prior state offense for weapons
18 possession, an arrest warrant had been issued for Defendant and Defendant’s mother was
19 informed of this fact. Despite that, according to the government, Defendant did not turn himself
20 in and was arrested as a fugitive months later at which time he told the police officers, in sum and
21 substance, that he had lost twenty pounds running from them.

22 5. While the Defendant does have family in the area and his mother stated that she would be
23 Defendant’s custodian and would be willing to sign a bond guaranteeing Defendant’s appearance,
24 the Court was concerned with the information in the government’s proffer, detailed above in
25 paragraph number 4, that Defendant’s mother, on a prior occasion, was aware of a warrant for
26 defendant’s arrest and she did not effectuate a voluntary surrender by Defendant. Therefore,
27 while Defendant’s mother has offered to sign an unsecured bond, given the risks discussed above,
28 the Court does not find the proposal adequate. It does not appear that she has the ability to

1 control Defendant's conduct.

2 6. As noted above, the Court is concerned with Defendant's criminal history. Specifically,
3 there is an escalating series of serious arrests and convictions in 2002, 2003, and 2004, all of
4 which involved weapons possessions, the last two of which resulted in felony convictions. Those
5 two convictions occurred while Defendant was on probation for the first gun offense. He violated
6 his parole in February, 2005.

7 7. To be sure, Defendant did not resist arrest and was not found with any weapons or drugs,
8 and Defendant proffers he is not an active participant in DBG. Nonetheless, given his record, his
9 prior unresponsiveness to a prior warrant, and the lack of appropriate custodian and sureties, the
10 Court finds by a preponderance of the evidence that Defendant poses a serious risk of flight and
11 by clear and convincing evidence a danger to the community, and that no currently available
12 condition or combination of conditions will reasonably assure the appearance of defendant as
13 required or ensure the safety of the community if he were released.

14 If other adequate conditions mitigating these risks addressing the concerns expressed herein
15 can be fashioned, Defendant may seek reconsideration.

16 Accordingly, IT IS HEREBY ORDERED that Defendant shall remain in the custody of the
17 United States Marshal Service until the completion of these criminal proceedings.

18
19 IT IS SO ORDERED

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21 DATED: December 7, 2005

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24 EDWARD M. CHEN
25 United States Magistrate Judge
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